

HOA University

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New Utah HOA Laws:

2010

1. Reserve Study now required to be done and then reviewed every two years – Utah Code § 57-8-7.5 (condo) and § 57-8a-211 (non-condo HOA's) (§ 57-8a-211 is attached below).
2. Transfer Fees – the HOA must record a notice separate from the covenant (separate from the CC&Rs or amendment to CC&Rs) – Utah Code § 57-1-46
3. Condominium Act made consistent with Community Association Act as to terminating utilities and recreational facilities by allowing this remedy to be authorized by simple rule, rather than requiring it in CC&Rs or Bylaws.

2009

1. Rental Restrictions – Utah Code § 57-8-10, § 57-8a-209
This law modifies the powers of an association to:
 - create reasonable restrictions on the number and terms of rental units or lots;
 - include rental restrictions in the association's recorded governing documents;
 - include a hardship exemption in the rental restrictions;
 - include a grandfather clause for existing rental units or lots; and
 - create procedures to track the number of rental units or lots.This law only applies to associations where the initial CC&Rs were recorded after May 11, 2009 (i.e., if your HOA is older than May, 2009, you can ignore this law).
2. Lender Approval to Amend CC&Rs – Utah Code § 57-8-41, § 57-8a-210
This law provides a simplified method of obtaining lender consent when amending CC&Rs, creates notification procedures to lenders if CC&Rs are amended.

2008

1. Incorporation of Association
 - specifically allows an association to organize as a nonprofit corporation or other entity;
 - addresses the priority of any conflicting governing provisions in the Condo Act, the Nonprofit Corporation Act, other law, and other documents, bylaws, and rules.

Utah Code § 57-8a-211 Reserve analysis -- Reserve fund.

- (1) As used in this section, "reserve analysis" means an analysis to determine:
 - (a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the association's general budget or from other association funds; and
 - (b) the appropriate amount of any reserve fund.

- (2) Except as otherwise provided in the governing documents, a board shall:
 - (a) (i) subject to Subsection (2)(a)(ii), cause a reserve analysis to be conducted no less frequently than every five years; and
 - (ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve analysis to be conducted before July 1, 2012; and
 - (b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every two years.

- (3) The board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the board, to conduct the reserve analysis.

- (4) (a) A board may not use money in a reserve fund:
 - (i) for daily maintenance expenses, unless a majority of association members vote to approve the use of reserve fund money for that purpose; or
 - (ii) for any purpose other than the purpose for which the reserve fund was established.
 - (b) A board shall maintain a reserve fund separate from other association funds.
 - (c) This Subsection (4) may not be construed to limit a board from prudently investing money in a reserve fund, subject to any investment constraints imposed by the governing documents.

- (5) Subsections (2), (3), and (4) do not apply to an association during the period of administrative control.

Utah Code § 57-1-46 (Summarized) Transfer fee and reinvestment fee covenants.

(1) As used in this section:

...

(i) "Reinvestment fee covenant" means a covenant, restriction, or agreement that:

(i) affects real property; and

(ii) obligates a future buyer or seller of the real property to pay to a common interest association, upon and as a result of a transfer of the real property, a fee that is dedicated to benefitting the burdened property, including payment for:

(A) common planning, facilities, and infrastructure;

(B) obligations arising from an environmental covenant;

(C) community programming;

(D) resort facilities;

(E) open space;

(F) recreation amenities;

(G) charitable purposes; or

(H) association expenses.

...

(4) A reinvestment fee covenant recorded on or after March 16, 2010 is not enforceable if the reinvestment fee covenant is intended to affect property that is the subject of a previously recorded transfer fee covenant or reinvestment fee covenant.

(5) A reinvestment fee covenant recorded on or after March 16, 2010 may not obligate the payment of a fee that exceeds .5% of the value of the burdened property, unless the burdened property is part of a large master planned development.

(6) (a) A reinvestment fee covenant recorded on or after March 16, 2010 is void and unenforceable unless a notice of reinvestment fee covenant, separate from the reinvestment fee covenant, is recorded in the office of the recorder of each county in which any of the burdened property is located.

(b) A notice under Subsection (6)(a) shall:

(i) state the name and address of the common interest association to which the fee under the reinvestment fee covenant is required to be paid;

(ii) include the notarized signature of the common interest association's authorized representative;

(iii) state that the burden of the reinvestment fee covenant is intended to run with the land and to bind successors in interest and assigns;

(iv) state that the existence of the reinvestment fee covenant precludes the imposition of an additional reinvestment fee covenant on the burdened property;

(v) state the duration of the reinvestment fee covenant;

(vi) state the purpose of the fee required to be paid under the reinvestment fee covenant; and

(vii) state that the fee required to be paid under the reinvestment fee covenant is required to benefit the burdened property.

(c) A recorded notice of reinvestment fee covenant that substantially complies with the requirements of Subsection (6)(b) is valid and effective.

(7) (a) A reinvestment fee covenant or transfer fee covenant recorded before March 16, 2010 is not enforceable after May 31, 2010, unless:

(i) a notice that is consistent with the notice described in Subsection (6) is recorded in the office of the recorder of each county in which any of the burdened property is located; or

(ii) a notice of reinvestment fee covenant or transfer fee covenant, as described in Subsection (7)(b), is recorded in the office of the recorder of each county in which any of the burdened property is located.

(b) A notice under Subsection (7)(a)(ii) shall:

(i) include the notarized signature of the beneficiary of the reinvestment fee covenant or transfer fee covenant, or the beneficiary's authorized representative;

(ii) state the name and current address of the beneficiary under the reinvestment fee covenant or transfer fee covenant;

(iii) state that the burden of the reinvestment fee covenant or transfer fee covenant is intended to run with the land and to bind successors in interest and assigns; and

(iv) state the duration of the reinvestment fee covenant or transfer fee covenant.

(c) A recorded notice of reinvestment fee covenant or transfer fee covenant that substantially complies with the requirements of Subsection (7)(b) is valid and effective.

(8) A reinvestment fee covenant recorded on or after March 16, 2010 may not be enforced upon:

(a) an involuntary transfer;

(b) a transfer that results from a court order;

(c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;

(d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or

(e) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed \$250.